

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER DENYING MOTION
TO COMPEL

This document relates to:

Beard, et al. v. Perrigo Co.,
et al., No. 03-470

This matter comes before the court on plaintiffs William and Sara Lepley's May 9, 2005 *pro se* motion to compel their former) attorney, W. Roger Smith, III, of the law firm of Lepley, Allen, Crow, Methvin, Portis & Miles, P.C., to return copies of service of summonses on the following defendants: N.A. Jen, Nathan Roach, and Duckwall-ALCO Store, Inc.

On June 6, 2005, the court granted plaintiffs' unopposed motion. On the same date, the court granted a motion by attorneys at the above-referenced law firm to withdraw from representation of the plaintiffs in this action.

On June 9, 2005, the court received a Motion for Reconsideration filed by attorney W. Roger Smith, III. Mr. Smith explained that as counsel to plaintiffs, he had been prohibited from taking

ORDER
Page - 1 -

1 a position adverse to plaintiffs' interests until after his
2 representation was terminated, and that therefore, he had re-
3 frained from filing an opposition to plaintiffs' motion to
4 compel. On June 23, 2005, the court granted Mr. Smith's Motion
5 for Reconsideration, vacated the June 6, 2005 Order and set a
6 briefing schedule to allow Mr. Smith an opportunity to respond to
7 plaintiffs' motion to compel.

8 On July 7, 2005, Mr. Smith filed an opposition to plain-
9 tiffs' motion to compel. Although the court's June 23, 2005 order
10 contemplated that plaintiffs would file a reply, plaintiffs did
11 not do so. Having reviewed the motion and the opposition, and
12 having been fully advised, the court hereby finds and concludes
13 as follows:

14 First, plaintiffs' request for the production of these
15 proofs of service bears no demonstrable relevance to plaintiffs'
16 claims in this action. The request is at most only potentially
17 relevant to a separate malpractice action filed by plaintiffs
18 against Mr. Smith and his law firm. In addition, these defendants
19 have all appeared formally, thus proofs of service are unneces-
20 sary and redundant. Fed. R. Civ. P. 4(1) clearly states that
21 "[f]ailure to make proof of service does not affect the validity
22 of the service." The court hereby DENIES plaintiffs' Motion to
23 Compel.

1 DATED at Seattle, Washington this 22nd day of August, 2005
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


Barbara Jacobs Rothstein
U.S. District Court Judge